

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JEAN KELLY and	)	
MOONLIGHT SLUMBER, LLC	)	
	)	
Plaintiffs,	)	No. 12-CV-9582
	)	
v.	)	Judge
	)	
AB MARKETERS, LLC	)	Mag. Judge
	)	
Defendant.	)	

COMPLAINT FOR INFRINGEMENT OF  
U.S. TRADEMARK REG. 2,869,636 AND OTHER RELIEF

Plaintiffs JEAN KELLY and MOONLIGHT SLUMBER, LLC complain of  
Defendant AB MARKETERS, LLC as follows:

NATURE OF THE ACTION AND THE PARTIES

1. This is an action for infringement of of the registered trademark COMFORT-U for pillows, U.S. Trademark Registration No. 2,869,636, registered August 3, 2004.

2. Plaintiff Jean Kelly is an individual residing at 924 Washington Avenue, Oskosh, WI 54901. Ms. Kelly is the sole owner of U.S. Trademark Registration No. 2,869,636.

3. Plaintiff Moonlight Slumber, Inc. is an Illinois corporation with principal offices at 200 Brook Street, Elgin, IL 60120. Moonlight Slumber is Ms. Kelly's exclusive licensee under Reg. No. 2,869,636 to use of the name and mark COMFORT-U for pillows.

4. Defendant AB Marketers, LLC is on information and belief a Michigan limited liability corporation having principal offices at 3333 Jefferson Avenue, Detroit, MI 48207, and/or at 23710 Overlook Circle Bingham Farms, MI 48025. On information and belief, Defendant also does business under the name and style "*Deluxecomfort.com*" at 3333 Jefferson Avenue, Detroit, MI 48207, and "*Living Healthy Products, LLC*", 1702 East Avis Drive, Madison Heights, MI 48071.

5. This court has original jurisdiction pursuant to 28 U.S.C. §1338(a) and 15 U.S.C. §1121 because this action arises under the trademark laws of the United States. Venue in this district is proper under 28 U.S.C. §1391 because by advertising and selling its accused products, Defendant has committed and is committing acts of infringement here, whereby the claims arose here.

#### COUNT I.

##### INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK

6. Ms. Kelly is, and at all times relevant hereto has been, the sole owner of U.S. Registration No. 2,869,636, registered August 3, 2004, for the name and mark COMFORT-U for pillows, which registration is valid and subsisting, unrevoked and uncanceled. A true and correct copy of U.S. Registration No. 2,869,636 is attached as Exhibit A. Ms. Kelly is also the sole owner of U.S. Patent No. 6,052,848, issued April 25, 2000, for a "Body Support Pillow", which patent is valid and subsisting, unrevoked and uncanceled.

7. Moonlight Slumber, LLC is, and at all times relevant hereto has been, the exclusive licensee under Ms. Kelly's U.S. Registration No. 2,869,636 and U.S. Patent No. 6,052,848 to manufacture and sell pillows under the name and mark COMFORT-U. A true and correct example of Moonlight Slumber's current advertising of its genuine COMFORT-U pillow on Amazon.com is attached as Exhibit B.

8. For a period of time to and until about June of 2012, Defendant AB Marketers, LLC purchased trademarked COMFORT-U pillows from Moonlight Slumber for resale through various retail outlets, including but not limited to Amazon.com.

9. On or about November 15, Plaintiffs became aware that Defendant had ceased purchasing genuine COMFORT-U pillows from Moonlight Slumber, LLC, and was offering for sale on Amazon.com and elsewhere non-genuine COMFORT-U pillows which do not originate from Moonlight Slumber, LLC or any other source authorized or licensed by Ms. Kelly. A true and correct example of Defendant's current advertising on Amazon.com is attached as Exhibit C. A true and correct example of Defendant's current advertising on Deluxecomfort.com is attached as Exhibit D.

10. On information and belief, in at least one of Defendant's advertisements for its non-genuine COMFORT-U pillows featured a photo depicting a genuine COMFORT-U pillow which photo was created by Moonlight

Slumber, LLC and to which Moonlight Slumber, LLC owns all rights of copyright.

11. On information and belief, Defendant's non-genuine COMFORT-U pillows are of inferior quality and have drawn harsh criticism in the Internet marketplace. One such comment, posted on Amazon.com on November 21, 2012, by "Cindy", an Amazon-verified purchaser, stated:

This pillow is listed as a Comfort-U Pillow on Amazon but it's a fake. We've ordered two Comfort-U pillows over the years on Amazon and this is the worst pillow I have ever seen. It's lumpy, dirty, and extremely wrinkled. It comes so wrinkled and lumpy you can't use it! My fear is that it's from some foreign country, maybe China, I can't tell because there are no labels on the pillow. I thought all pillows were supposed to have a "Law Label" on them so you could tell what it's made of and where it comes from. There are no labels on the pillow itself or the wrinkled pillow case. This is not a real Comfort-U Pillow. I guess you get what you pay for and will be returning this mess!

12. On October 26, 2012 Plaintiffs, through their undersigned attorney, notified Defendant of its infringement and demanded that such infringement cease and desist.

13. On November 9, 2012, Defendant responded, claiming that by having added the word "shaped" after Ms. Kelly's registered trademark COMFORT-U, its use became "merely descriptive" and therefore non-infringing. Defendant therefore refused to cease and desist from its infringing acts.

14. Despite its disclaimer, Defendant, through an associated company named "Living Healthy Products, LLC", continues to advertise and offer for sale non-genuine COMFORT-U pillows through an on-line catalog entitled "*PILLOW & Gift Bar 2012 Winter Catalog – Exclusive Discounts for your company*" in Ms.

Kelly's registered name and mark COMFORT-U continues to appear with no indication that such use is intended to be "merely descriptive". A true and correct copy of the relevant page from that on-line catalog is attached as Exhibit E.

15. Such adoption and use by Defendant of Ms. Kelly's registered trademark COMFORT-U is an infringement of Plaintiffs's rights and in violation of 15 U.S.C. §1114.

16. Plaintiffs have been and continue to be damaged by the acts of Defendant complained of in this Count I.

17. On information and belief, the infringement by Defendant complained of in this Count I have been willful and deliberate.

## COUNT II.

### FALSE DESIGNATION OF ORIGIN

18. Plaintiffs repeat and re-alleges paragraphs 1 - 17 of Count I and incorporate the same by reference.

19. The foregoing acts of Defendant constitute false designations of origin and false descriptions within the meaning of 15 U.S.C. §1125(a).

20. Plaintiffs have been and continue to be damaged by the acts of Defendant complained of in this Count II.

## COUNT III.

### ILLINOIS STATUTES

21. Plaintiffs repeat and re-allege paragraphs 1 - 20 of Counts I and II and incorporate the same by reference.

22. Under Under Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, Defendant owes a duty to Plaintiffs not to use or employ of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or use or employ of any other practice as described in Section 2 of the "Uniform Deceptive Trade Practices Act" (815 ILCS 510/2) in the conduct of any trade or commerce, whether any person has in fact been misled, deceived or damaged thereby.

23. Defendant's use of Ms. Kelly's registered mark COMFORT-U and depiction of an apparently similar but in fact non-genuine product in its advertising violates the above-mentioned provisions of the Illinois statutes and thereby violates the duty Defendant owes to Plaintiffs under those statutes.

24. Plaintiffs have been and continue to be damaged by the acts of Defendant complained of in this Count.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. For preliminary injunction prior to trial restraining Defendant from further infringement of Plaintiffs's registered trademark COMFORT-U, and from depicting non-genuine pillow products in its advertising under the pretense that it originates with or is sanctioned by Plaintiffs;
- B. That such injunction thereafter be made permanent;

- C. For an accounting and an award of damages adequate to compensate plaintiff Plaintiffs for Defendant's infringements;
- D. For an increase in damages by reason of Defendants' willful infringements;
- E. For an award to plaintiff Plaintiffs of its costs and reasonable attorney fees pursuant to statute; and
- F. For such other and further relief as may be just.

JEAN KELLY and  
MOONLIGHT SLUMBER, LLC

By: /George E. Bullwinkel/  
Its attorney

Date: December 3, 2012

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